

The court of appeals in this state, have in no case decided that either a subsequent or prior mortgagee, *whose debt is due*, need not be made a party. If his debt is not due, his presence may, perhaps, be dispensed with, because there is no power in this court to compel him to take his money before it becomes due.

But if the debt secured by the first mortgage be due, then the desire of the court, in all cases to make a final settlement of the rights of all persons interested, strongly enforces the necessity of bringing him in as a party.

[The defendant, William McMakin, and a certain John F. Forrest, composing the firm of McMakin & Co. being indebted unto the complainants, being the several persons constituting the firms of Wylie & Wilson, Camper, Berkley & Bruff, Baugher, Buckey & Orndorf, Levering & Clark, Fite & Grinnel, Frederick Fickey & Sons, and Lewis Lauer, William Loney and William H. McLean, on the 21st July, 1848, executed their several promissory notes to the several complainants, for the amounts due them respectively, payable in six, nine, twelve, fifteen and eighteen months from that date, and to secure the payment thereof, the said William McMakin and Agnes his wife, on the 28th of July, 1848, conveyed, by way of mortgage, certain real estate, lying in Howard District, to Thomas Camper, one of the complainants, in trust, to hold the same as security for the prompt and punctual payment of these notes, a schedule whereof was thereto annexed, the said conveyance to be void upon the punctual payment and satisfaction of said notes, as they become due. On the 16th of May, 1849, the complainants filed their bill against McMakin and wife, stating the above facts, and charging that all of said notes which were payable at six months, had become due, and had not been paid, and praying for a sale of the mortgaged premises for the purpose of paying said notes, &c.

*The answer* of McMakin and wife to this bill, admits the execution of the deed to Thomas Camper, and charges that the negotiation with respondent, William, for executing said mortgage, was conducted solely by said Camper, acting for himself, and in behalf of the other complainants. That at first, respondent refused to give the mortgage, alleging that part of the property belonged to his wife, and that he would not suffer her to